

ASSET PURCHASE AGREEMENT AMENDMENT

This ASSET PURCHASE AGREEMENT AMENDMENT ("Amendment") is entered into this the ___ day of January 4, 2018 ("Effective Date"), by and between NNP-Briar Chapel, LLC, a Delaware limited liability company authorized to do business in North Carolina (hereinafter "Developer" or "NNP-BC") and Old North State Water Company, LLC, a North Carolina limited liability company (hereinafter "ONSWC"). Individually, Developer and ONSWC may be referred to as a "Party" and collectively referred to as "the Parties."

WITNESSETH

WHEREAS, the Parties entered into a certain Asset Purchase Agreement on October 31, 2014 (hereinafter "APA") whereby ONSWC acquired a wastewater utility system which serves a service area within Chatham County, North Carolina referred to as Briar Chapel Development.

WHEREAS, Section 9.13 of the APA provides that the APA "shall not be modified, amended or changed in any respect except in writing, duly signed by the Parties and each Party hereby waives any right to amend this Agreement in any other way."

WHEREAS, the Parties now desire to amend the APA in accordance with Section 9.13 of the APA to reflect a certain letter of intent entered into between Developer and ONSWC on April 9, 2018.

NOW THEREFORE, in consideration of the mutual covenants, conditions, warranties, representations, stipulations, and agreements hereinafter contained, the Parties mutually agree and consent to amend the APA as follows:

Section 1 – Additions to the APA

1. Project

1.1 Project. ONSWC shall design, engineer, permit, finance, construct, own, and operate a regional lift station, force main, and return reclaimed line to the Briar Chapel wastewater treatment plant to serve SD East Commercial area of Briar Chapel wastewater treatment plant (hereinafter "Wastewater Improvements") to serve the SD East Commercial Area and portions of the SD West Commercial area. The Wastewater Improvements will be installed in accordance with the timeline established by this Amendment.

1.2 Project Completion Deadlines

1.2.1 The SD East wet well will be installed and connected to the SD East sewer collection system on or before May 30, 2018.

1.2.2 The SD East pump station shall be installed and operational on or before ~~March~~ May 31, 2018. ³¹

1.2.3 The force main connecting SD East to the Briar Chapel WWTP will be installed and permitted to receive flow from Developer on or before ~~December 31, 2018~~ March 31, 2019. ONSWC shall guarantee completion by said date. The reclaimed return line—or discharge line—will be

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installed at the same time as the sewer force main. However, it is understood that its ultimate connection to the Fearington WWTP will not occur until 2019. Developer will require this discharge line to be operational by December 31, 2019.

1.2.4 The expansion of the Briar Chapel WWTP shall be completed and operational on or before ~~December 31, 2019.~~

MARCH 31, 2020.

4)

1.3 Liquidated Damages. ONSWC shall pay Developer liquidated damages of \$500.00 per day for each day after any deadline until the required improvement is completed. The deadline times shall be of the essence and the liquidated damages shall become immediately due and payable without necessity of notice or opportunity to cure. Force Majeure: ONSWC shall not be liable for delays caused by terrorism, act of God or court order.

1.4 Liens. ONSWC shall keep all property owned by Developer, its successors and assigns, including the Briar Chapel Community Association, Inc., free and clear of any mechanic's or materialmen's liens, and shall promptly release, or cause the release of, all liens, recorded notices, claims for nonpayment or notices of *lis pendens* made or filed by its contractors, sub-subcontractors, or material or equipment suppliers of any tier, whether during or after the term of this Agreement ("Liens"). In the case of Liens or recorded notices relating to Liens, ONSWC shall, at ONSWC's cost and expense, accomplish such removal by recording a release of lien, properly executed by the lien claimant, or by filing with a court of competent jurisdiction or appropriate governmental body a properly executed bond in accordance with all statutory and other requirements (provided that such bond and the surety issuing it shall be acceptable to such court) in the minimum amount of one and one-half (1 ½) times the amount of the recorded Lien or such greater amount as may be prescribed by law; provided, however, that such bonding procedure must operate to fully remove the Lien as an encumbrance against both actual and record title to the property of Developer, its successors and assigns, including the Briar Chapel Community Association, Inc. If any Lien, stop notice, stop payment notice, claim, security interest, or encumbrance arises or remains unsatisfied, ONSWC shall defend, indemnify, and hold harmless Developer from all damages, charges, payments, and expenses that Developer incurs in discharging such Lien, including all costs and reasonable attorneys' fees. In addition to the foregoing rights, in the event any Liens are filed in connection with ONSWC's work required under this Amendment, Developer may also, in its sole discretion, do any or all of the following: (1) file a bond to release the Lien; (2) order ONSWC to cease all operations on the property; (3) complete ONSWC's work under this Amendment; and (4) take any other measures it deems appropriate under the circumstances. In the event Developer elects to take any or all of the actions enumerated in the preceding sentence, ONSWC shall be liable to Developer for all of its expenses, costs, and damages, including reasonable attorneys' fees in connection with such action. Developer may unilaterally offset any such claim for expenses, costs, and damages, or any of those, against any and all amounts Developer may owe to ONSWC pursuant to this Agreement.

1.5 Reservation of Capacity. ONSWC shall reserve and hold exclusively for Developer and its designees up to 600,000 gallons per day ("GPD") of wastewater treatment capacity in the expanded Briar Chapel plant for the Briar Chapel development and its Expanded Service Area. Upon utilization of 2,777 REUs by Developer, including within the Expanded Service Area and all commercial development within the Briar Chapel compact community, any excess reserved treatment capacity will be returned to ONSWC. ONSWC shall also reserve and hold exclusively for Developer and its designees up to 195,000 GPD of discharge capacity through the expanded Ferrington Village discharge permit.

1.5.1 Option to Purchase Additional WWTP and SD East Pump Station Capacity. Developer has the option, and hereby reserves the right, to purchase up to 50,000 GPD at the then in effect capacity fee amount in the WWTP, and SD East Pump Station. Notwithstanding this provision, the pro-rata rate calculated in accordance with this paragraph 1.5.1 shall be in effect until January 1, 2021. ONSWC shall reserve and hold exclusively for Developer, its successors and assigns, 50,000 GPD of WWTP and SD East Pump Station capacity.

1.5.2 Option to Purchase Additional Reclaimed Water Line Capacity. Developer has the option, and hereby reserves the right, to purchase up to 250,000 GPD at the then in effect capacity fee amount in the expanded Briar Chapel WWTP. Notwithstanding this provision, the pro-rata rate calculated in accordance with this paragraph shall be in effect until January 1, 2021 or expansion beyond 1.0 MGD. ONSWC shall reserve and hold exclusively for Developer, its successors and assigns, 250,000 GPD of reclaimed water line capacity.

1.6 Developer Capacity Fee. Developer shall pay a capacity fee to ONSWC equal to its prorated portion of the total capacity of the (i) regional lift station and force main and (ii) return reclaimed water line based on the following capacities:

1.6.1 The total capacity of the regional pump station and force main will be 750,000 GPD. Developer's reserved portion of that capacity shall be 150,000 GPD. The total cost to ONSWC of the regional pump station and force main was \$3,509,358.00. Developer's capacity charge is equal to twenty percent (20%) of the total cost of materials and labor for installation of the regional pump station and force main or \$701,872.

1.6.2 The total discharge capacity of the reclaimed water line shall be 1,250,000 GPD. Developer's reserved portion of the reclaimed water line discharge capacity shall be 150,000 GPD (12% of the total capacity). The total cost of the reclaimed line is \$2,902,808.00. Developer's capacity charge is equal to twelve percent (12%) of the total cost of materials and labor for installation of the Return Reclaimed Line or (\$348,337.00).

1.7 Credits. The Parties acknowledge and agree that the Developer has constructed portions of the Project that benefit ONSWC, and that ONSWC's portion of the Project will benefit future responsibilities of the Developer. ONSWC shall therefore provide a credit to Developer in the amount of \$505,661.00 for those construction items installed and paid for by the Developer in accordance with paragraph 1.6. Likewise, Developer shall reimburse ONSWC in the amount of \$245,000.00 for those construction items installed and paid for by ONSWC that benefit the future responsibilities of Developer, *if any.*

1.8 Dissolution of BCU. ONSWC and Developer each acknowledge that since the closing of the APA, Briar Chapel Utilities, LLC ("BCU") filed a Certificate of Cancellation of the BCU limited liability company in the State of Delaware, Office of the Secretary of State, Division of Corporations (October 28, 2015) and that a corresponding Application for Certificate of Withdrawal of Limited Liability Company was submitted to the North Carolina Department of Secretary of State. BCU has been dissolved. ONSWC and Developer agree that the sole parties necessary to amend the APA are ONSWC and Developer, notwithstanding anything in the APA to the contrary.

Section 2 – Amendments to the APA

2.1. Sections 4.2(a) and 5.3(c) of the APA, and any other applicable APA sections, are hereby amended to reduce or eliminate Developer's obligation to build any additional spray fields and ponds (because they will no longer be needed as a result of the discharge capacity granted as a result of the Project) in excess of those needed to provide 400,000 GPD of spray irrigation. Such reduction or elimination shall be contingent upon Developer providing 400,000 GPD of discharge through a combination of spray field capacity and additional reclaimed discharge capacity purchased by Developer.

2.2. Sections 3.2 and 3.4 of the APA are hereby amended to:

- (a) Acknowledge that the total number of currently planned residential connections in Briar Chapel is 2,777.
- (b) Allow ONSWC to increase residential and/or non-residential Connection Fees and retain the increased portion of the residential and non-residential REU Connection Fees. By way of illustration, should ONSWC increase the Connection Fee by \$200 per REU, ONSWC would retain the increased amount of \$200 per REU. Notwithstanding anything else to the contrary, however, until such time as Developer owns no commercial lots within the Briar Chapel Compact Community and fewer than ten (10) residential lots, the maximum total cumulative increase in the residential and non-residential Connection Fees shall not exceed \$4,000 per REU and shall be subject to proper notice and approval by the NCUC.

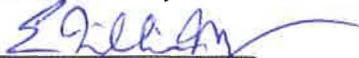
Section 3 – Remainder of the APA

3.1 Except as expressly modified and amended in this Amendment, the APA shall remain in full force and effect.

Signature Page to Follow

IN WITNESS WHEREOF, the Parties have this Amendment to be duly executed in their respective names, all by authority duly given, the date first written above.

NNP-BRIAR CHAPEL , LLC

By: 

Name: E. William Meyer

Title: SLP

OLD NORTH STATE WATER COMPANY, LLC

By: 

Name: Michael J. Myers

Title: Member